



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/171393

PRELIMINARY RECITALS

Pursuant to a petition filed January 12, 2016, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Early Care Administration - MECA in regard to Child Care, a hearing was held on February 17, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly determined that petitioner is liable for a child care overpayment in the amount of \$1,951.17 for the period from 5/31/15 to 6/30/15.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, Wisconsin 53703

By: [REDACTED]
Milwaukee Early Care Administration - MECA
Department of Children And Families
1220 W. Vliet St. 2nd Floor, 200 East
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner was a recipient of CC benefits.

3. Petitioner was employed by [REDACTED] but she was unable to work as of 4/17/15 after an injury. She remained an employee following the injury but was not working any hours.
4. Petitioner continued to send her children to day care while she recovered from her injury.
5. Petitioner reported the termination of employment, but the agency failed to enter the change in a timely manner.
6. Petitioner went back to work on July 1, 2015.
7. The agency issued a CC overpayment notice on 12/11/15 in the amount of \$1,951.17 for the period from 5/31/15 to 6/30/15.

DISCUSSION

All childcare funding distribution falls under the aegis of the Wisconsin Works (W-2) program, regardless of whether or not the applicant is actually a participant in W-2 activities. See WI Stat § 49.155(1m). Prior to November 24, 2003, any parent desiring to contest child care assistance overpayments was required to request a fact-finding review from the issuing W-2 agency. Effective November 24, 2003, the Department of Workforce Development changed the process to provide recipients of such assistance a fair hearing from the Division of Hearings & Appeals. See, *DWD Operations Memo*, #03-66. See also, WI Stat §49.195(3), § 49.152(2), & § 227.42, *et. seq.*

In a Fair Hearing concerning the propriety of an overpayment determination, the agency has the burden of proof to establish that the action it has taken was correct given the facts of the case. If the agency meets its burden, the petitioner must then rebut the agency's case and establish facts sufficient to overcome its evidence of correct action.

The ultimate question here is whether the petitioner received more child care benefits than to which she was entitled. Not every parent is eligible for W-2 child care services, even if they meet the financial criteria, as there are also nonfinancial eligibility criteria. A parent is eligible for child care services if she needs the care to attend W-2-approved school, to work, or to participate in W-2 activities. See Wis. Stat. §49.155(1m)(a).

Wisconsin Shares child care assistance is only available to individuals that are participating in Approved Activities. See *Child Care Policy Manual (Manual)*, §1.4.8. Those Approved Activities include: Learnfare, High School, Unsubsidized Employment, Qualified Employers, Pre-Job Training, Apprenticeships, Sheltered Employment, Work Study, Youth Employment, Legitimate Self-Employment, Wisconsin Works or Tribal TANF Employment Position, FSET, Basic Education, Technical College or Course of Study Producing Employment.

Petitioner's only argument at the hearing was that the overpayment is error because she reported the change in employment but the agency did not tell petitioner that she could not use benefits as a result of the change. Petitioner also explains that she still had the job even though she was not working during the overpayment period. Petitioner thought this was enough to qualify for CC.

The agency explains that it allowed petitioner 6 weeks of benefits from 4/17/15 to 5/31/15 in which it is not seeking recoupment. The agency has allowed this under Child Care Manual § 2.8.4. The agency also notes that even if caused by the agency, the overpayment is still recoverable.

First, with regard to employment, a person must participate in employment which is further stated as as "[p]articipation in an activity which produces income." In this case, not actively working and instead recovering at home cannot be interpreted to meet that requirement. This, petitioner was not participating in an approved activity following her injury and during her recovery.

Additionally, it makes no difference as to whether the overpayment was caused by the county agency or the client since the recovery of the overpayment is required, regardless of fault. Wis. Stat., §49.195(3), provides that the agency must determine if an overpayment has occurred under §49.155, and the agency must seek recovery of the overpayment. There is no exception even for situations when the agency's error caused the overpayment. This is also reflected in the applicable overpayment rule, Wis. Admin. Code §12.23(1)(g) and (3)(a). See also *Child Care Manual* § 3.5.2. Thus, the agency may establish the overpayment claim as alleged against the petitioner.

CONCLUSIONS OF LAW

The Department did not err in its determination of an overpayment.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 5th day of May, 2016

\sJohn P. Tedesco
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on May 5, 2016.

Milwaukee Early Care Administration - MECA
Public Assistance Collection Unit
Child Care Fraud